

FILED

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 012667

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN
HIS OFFICIAL CAPACITY AS SENIOR
CHAIR OF THE HOUSE STANDING
COMMITTEE ON REDISTRICTING, et al.,

Defendants.

**MOTION FOR EXPEDITED BRIEFING
AND RESOLUTION OF
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Plaintiffs, who are individual voters from each of North Carolina's 13 congressional districts, respectfully request that the Court expedite briefing and resolution of their Motion for a Preliminary Injunction, filed simultaneously with this motion. In support of their motion to expedite, Plaintiffs state as follows:

1. Plaintiffs filed the Verified Complaint in this action on September 27, 2019, challenging North Carolina's 2016 congressional redistricting plan (the "2016 Plan") as an illegal partisan gerrymander in violation of the North Carolina Constitution's Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses. Defendants are the chairs of the state House and state Senate redistricting committees, the Speaker of the state House, the President Pro Tempore of the state Senate (collectively, "Legislative Defendants"), and the State Board of Elections and its members (collectively, "State Defendants"). As of today, Plaintiffs have effectuated service on all Defendants.

2. Today, one business day after filing this action, Plaintiffs filed a motion for a preliminary injunction (1) barring Defendants from administering, preparing for, or moving

forward with the 2020 primary and general congressional elections using the 2016 Plan; and (2) establishing a remedial process to create a new plan that complies with the North Carolina Constitution, including a court-ordered remedial plan if the General Assembly fails timely to enact a new plan comporting with the North Carolina Constitution.

3. Plaintiffs and the public have a strong interest in resolving this motion for preliminary injunction as expeditiously as possible to ensure that new, lawful districts can be established for the 2020 primary and general elections. In nearly every state and federal legislative election held in North Carolina since 2010, voters have been forced to cast their ballots in districts that the courts ruled unconstitutional. The 2011 state House and Senate plans were unconstitutional racial gerrymanders, and the 2017 replacements were unconstitutional partisan gerrymanders, as a three-judge panel of this Court recently held. Likewise, the 2011 congressional plan was an unconstitutional racial gerrymander. *See Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016), *aff'd sub nom. Cooper v. Harris*, 137 S. Ct. 1455 (2017). And the 2016 Plan at issue in this case is an unconstitutional partisan gerrymander. North Carolinians should not be forced again to vote in unconstitutional districts.

4. While this Court could push back the March 2020 congressional primaries to provide more time to decide the preliminary injunction motion and establish a remedial plan, the Court can avoid that step by proceeding expeditiously. In *Common Cause v. Lewis*, the State Board of Elections advised that the final state legislative districts had to be in place by the end of November 2019 or potentially early December 2019 to be used in the March 2020 primaries. If the same timeline applies for the congressional districts, there is adequate time to resolve Plaintiffs' preliminary injunction motion on the merits and establish a remedial plan.

5. On the merits, this is a straightforward case. No discovery or extensive expert analysis is needed for this Court to issue a preliminary injunction. As Plaintiffs' motion explains, the Court can and should enjoin the 2016 Plan based on the official legislative criteria for creation of the plan and the admissions of Legislative Defendants and their mapmaker, Dr. Hofeller. All of the relevant facts pertinent to the preliminary injunction are incontrovertible and undisputed.

6. The law is as clear as the facts. In *Common Cause*, this Court established that "the constitutional rights of North Carolina citizens are infringed when the General Assembly ... draws district maps with a predominant intent to favor voters aligned with one political party at the expense of other voters." 18-CVS-014001, slip. op. at 6 (N.C. Sup. Ct. Sept. 3, 2019). Irrespective of federal law, partisan gerrymandering violates the North Carolina Constitution's Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses. *Id.* at 9, 307-31. By Legislative Defendants' own contemporaneous admissions, the 2016 Plan is an extreme partisan gerrymander and therefore violates the North Carolina Constitution under *Common Cause*.

7. Sufficient time likewise remains to establish and implement a remedial plan on the current election schedule, without moving the March 2020 primaries. During the recent remedial phase in *Common Cause*, the General Assembly adopted two separate remedial plans revising a total of 77 state House and state Senate districts over a mere 8-day period. The remedial phase in this case will be much easier, as it involves just one remedial plan with only 13 districts. There is ample time for the Court to decide this motion, allow the General Assembly two weeks to redraw the map, and review the remedial map with the assistance of a referee.

8. To promote a timely resolution and establish a remedial plan for use in the March 2020 primaries, Plaintiffs propose the following schedule:

- Defendants shall file their responses to Plaintiffs' motion for preliminary injunction on or before October 14, 2019.
- Plaintiffs shall file their reply on or before October 18, 2019.
- Any hearing on the motion shall be held the week of October 21 to 25, 2019, with the specific date and time to be set by the Court.
- A decision on the motion for preliminary injunction will issue by November 1, 2019.

9. Plaintiffs' proposed schedule will allow adequate time for the establishment and implementation of a remedial plan for use in 2020 on the current election schedule. Specifically, if the Court grants the preliminary injunction, it can give the General Assembly two weeks—until November 15, 2019—to enact a new plan that comports with the North Carolina Constitution, and direct the General Assembly to transmit the new plan to the Court (both a PDF and the shape file and block assignment files) by November 18. Next, the parties would submit simultaneous briefs supporting, objecting to, or otherwise addressing the General Assembly's proposed new plan by 5:00 p.m. on November 22, 2019. The Court then could review the General Assembly's proposed plan with the assistance of a referee, and publish the final remedial plan one week later—by 5:00 p.m. on November 29, 2019. This will allow the State Board of Elections to implement the remedial plan for use in the March 2020 primaries.

10. While sufficient time remains to resolve Plaintiffs' preliminary injunction motion and implement a remedial plan on the current election schedule, the schedule can be adjusted to provide effective relief. The State Board of Elections has authority "to make reasonable interim rules and regulations" to move administrative deadlines in the event that any North Carolina election law "is held unconstitutional or invalid by a State or federal court." N.C. Gen. Stat.

§ 163A-742. And this Court has remedial authority to move the 2020 congressional primary elections, if necessary. *See Lewis*, slip op. COL ¶¶ 181-82. The Court could move the primaries under one of two approaches. First, the Court could move all of the State's 2020 primaries, including for offices other than the U.S. House, to a later date in 2020. Alternatively, the Court could move the primaries for only the U.S. House to a later date, while keeping the primaries for other offices on the currently scheduled date of March 3, 2020. One possibility would be to move the congressional primaries to the "Second Primary" date that has taken place in every recent election cycle for primary run-offs.

11. There is precedent for both approaches. In 2002, the North Carolina Supreme Court in *Stephenson v. Bartlett* enjoined the primaries for the state House and state Senate from occurring on the originally scheduled date, 355 N.C. 281, 282, 561 S.E.2d 288 (2002), causing all of the State's primaries to be moved to a different date, 357 N.C. 301, 303, 582 S.E.2d 247, 249 (2003). And in 2016, after the federal court in *Harris* enjoined the State's congressional plan as an unconstitutional racial gerrymander, the General Assembly moved *only* the congressional primaries, while leaving other primaries (including the presidential primary) on the originally scheduled date. See Session Law 2016-2 § 1(b). Such changes are not necessary at this stage, however, as the Court has sufficient time to receive briefing and argument, issue a preliminary injunction, and oversee a remedial process under the current election schedule.

WHEREFORE, Plaintiffs request that the Court enter an order expediting briefing and decision on Plaintiffs' motion for preliminary injunction on the schedule set out above.

Respectfully submitted this the 30th day of September, 2019.

PATTERSON HARKAVY LLP


Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Plaintiffs

**ARNOLD & PORTER
KAYE SCHOLER LLP**

R. Stanton Jones*
Elisabeth S. Theodore*
Daniel F. Jacobson*
William C. Perdue*
Sara Murphy D'Amico*
Graham W. White*
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
stanton.jones@arnoldporter.com

PERKINS COIE LLP

Marc E. Elias*
Aria C. Branch*
700 13th Street NW
Washington, DC 20005-3960
(202) 654-6200
melias@perkinscoie.com

Abha Khanna*
1201 Third Avenue
Suite 4900
Seattle, WA 98101-3099
(206) 359-8000
akhanna@perkinscoie.com

Counsel for Plaintiffs

* *Pro hac vice motions forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing to counsel for Defendants North Carolina State Board of Elections and its members via *e-mail*, and served a copy of the foregoing to the remaining defendants by *U.S. mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

Warren Daniel
300 N. Salisbury Street
Rm. 627
Raleigh, N.C. 27603

Paul Newton
300 N. Salisbury Street
Rm. 312
Raleigh, N.C. 27603

David R. Lewis
16 West Jones Street
Rm. 2301
Raleigh, N.C. 27601

Ralph E. Hise
300 N. Salisbury St.
Rm. 300-A
Raleigh, N.C. 27603

Timothy K. Moore
16 West Jones Street
Rm. 2304
Raleigh, N.C. 27601

Philip E. Berger
16 West Jones Street
Rm. 2007
Raleigh, N.C. 27601

This the 30th day of September, 2019.



Burton Craige, NC Bar No. 9180